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In re Application of  
SAUER, et al.  
U.S. Application No.: 09/446,137  
PCT No.: PCT/EP98/03348  
Int. Filing Date: 4 June 1998  
Priority Date: 4 July 1997  
Attorney Docket No.: A-6866  
For: PROCESS FOR FURTHER PROCESSING  
OF SMALL GLASS PARTICLES

DECISION ON PETITION  
UNDER 37 CFR 1.47(a)

This decision is in response to applicant's "PETITION UNDER 37 CFR 1.47(a)" filed 3 April 2000.

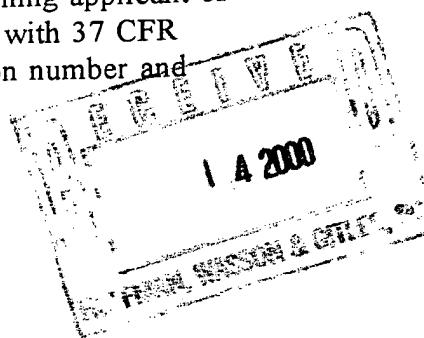
BACKGROUND

On 4 June 1998, applicant filed international application PCT/EP98/03348, which claimed priority of an earlier Austrian application filed 4 July 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 14 January 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 04 January 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 January 2000.

On 30 December 1999, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1). An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed.

On 29 February 2000, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.

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RESPONSE BY 8/12/00



DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(i), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to Items (1) and (3), applicants have enclosed a check for the required petition fee of \$130.00 and the petition states the last known address of the non-signing inventor.

Regarding Item (4), accompanying the petition is a declaration signed by the remaining inventors on their behalf, and on behalf of the non-signing inventor. Accordingly, Items (1), (3) and (4) have been satisfied.

As to Item (2), applicant alleges that inventor Sauer refuses to sign the application, yet applicant has failed to provide any pertinent proof that the non-signing inventor has been provided with the application papers and refuses to execute them. Indeed, the petition provides no evidence whatsoever as to the specifics of the alleged refusal. Accordingly, applicant has not provided sufficient proof that Mr. Sauer refuses to execute the application papers.

CONCLUSION

Applicants' petitions under 37 CFR 1.47(a) is **DISMISSED, without prejudice.**

Applicants are hereby afforded TWO (2) MONTHS from the mail date of this decision to file either 1) an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) signed by all inventors or 2) a renewed petition satisfying all requirements under 37 CFR 1.47(a). Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extension of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.



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